

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force
FROM: Gerald Mueller
SUBJECT: Summary of the November 14, 2005 Task Force Meeting
DATE: November 15, 2005

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Eugene Manley	Granite County & Montana Water Resources Association
Harvey Hackett	Bitterroot Water Forum
Rep. Verdell Jackson	House District 6
Fred Lurie	Blackfoot Challenge
Jim Dinsmore	Upper Clark Fork
Gail Patton	Sanders County
Matt Clifford	Clark Fork Coalition
Arvid "Butch" Hiller	Mountain Water Company
Marc M. Spratt	Flathead Conservation District
Rep. Joey Jayne	House District 15

Staff:

Gerald Mueller	Consensus Associates
Mike McLane	Montana Department of Natural Resources and Conservation (DNRC)

Other:

Gary MacLaren	House District 89
Phil Tourangeau	CS&KT

Meeting Agenda

- Task Force membership update
- Hungry Horse operation update
- Tribal discussions regarding the Hungry Horse negotiations
- DNRC Director letter regarding Hungry Horse negotiations
- Ground water conference discussion
- Review work plan
- Schedule meeting

Hungry Horse Operation Update

Kerry Berg, Policy Analyst for the Northwest Power and Conservation Council, briefed the Task Force on recent court-related actions that may affect the operation of Hungry Horse Dam. He passed out a copy of an article from the *Daily Interlake*, the Kalispell newspaper. This article is attached below as Appendix 2.

Mr. Berg explained that the plaintiffs in a law suit before United States District Judge James A. Redden have requested additional flows that would require holding Hungry Horse Reservoir as full as possible during the late winter and early spring and releasing an expected 1.8 million acre feet from Hungry Horse and Libby dams above what was released in 2004 during the spring and summer. On an annual basis, the plaintiffs are also seeking release of an additional 500,000 acre-feet of water from non-treaty storage in Canada, and an additional 130,000 acre-feet from

Banks Lake. Judge Redden had previously overturned the biological opinion issued by the National Marine Fisheries Service for the Columbia River salmon and steelhead species included on the endangered species list. Montana is a party to this lawsuit, seeking to protect Montana's interests in the operation of these dams, which includes native endangered species.

Task Force Member Question - Would these changes affect flood control provided by Hungry Horse Dam?

Answer - This is a valid concern. At some point the Task Force may want to consult with Brian Marotz of Montana Fish, Wildlife, and Parks in Kalispell who is an expert on flood control and was one of the developers of VarQ.

Task Force Member Question - Has the State of Montana joined the lawsuit for the 2006 operational year?

Answer - - Initially Montana joined the lawsuit initially over the long-term planning issues. Montana is now responding to a request by the plaintiffs for additional flow and spill in 2006. Negotiations with the pertinent federal agencies, tribes, and states continue on a long-term agreement regarding hydro operations.

Task Force Member Question - Do you see a conflict between state water rights and the operation of Hungry Horse to provide flows for downstream salmon and steelhead?

Answer - Water rights have not been raised to date.

Answer by Gerald Mueller - In my conversation with state attorneys, a concern exists such a conflict may trigger federal preemption.

Tribal Discussions Regarding the Hungry Horse Negotiations

Gerald Mueller reported that, pursuant to Task Force direction at the October meeting, he had spoken with Fred Matt, Chairman of the Confederated Salish and Kootenai Tribes. Chairman Matt referred him to John Carter, a Tribal attorney. Mr. Carter has arranged for a meeting between himself, Clayton Matt, Rhonda Swaney, and Phil Tourangeau and Task Force representatives on December 1 at 10:00 a.m. at the Tribal Complex in Pablo to discuss the Hungry Horse negotiations. Mr. Mueller will attend. Marc Spratt and Elna Darrow previously volunteered to attend as Task Force representatives.

DNRC Director Letter Regarding Hungry Horse Negotiations

Mike McLane handed out a copy of Mary Sexton's letter responding to Chairman Fred Matt. See Appendix 3 below. He noted that Director Sexton suggests that the Tribes and the State jointly approach the Bureau of Reclamation (BOR) to explore what water may be available from Hungry Horse. She suggests that the approach be made without first estimating a specific amount of water to be requested. The Task Force generally agreed that making an unquantified request of the Bureau of Reclamation for Hungry Horse water would not be the best approach to take. Gerald Mueller will discuss with the Tribal officials in the December 1 meeting estimating an amount of water to be requested. Highlights of other points discussed follow. The Task Force also requested that Mike McLane collect available information about the cost of water in BOR's recent municipal water contracts for Canyon Ferry water.

Task Force Member Comment - The basin's rapidly growing population will require additional water. One way to estimate future water demand would be to multiply projected population levels by per capita water use.

Task Force Member Question - If urban growth is replacing agriculture, would the demand for water increase?

Answer by Marc Spratt - In the Kalispell area, water use in new subdivisions appears to be equal or greater than the agriculture use that it is displacing. The source of the water would probably change. Irrigation uses predominantly surface water, while domestic uses come from wells.

Task Force Member Question - What is the per capital use of water on Mountain Water's System?

Answer - We cannot calculate this amount directly for the whole system because some of our customers do not have water meters. We estimate water use at about 350 gallons per day per house and about 2.3 people per house.

Task Force Member Comment - Water is critical for future basin economic development. I am familiar with a group that wanted to build a 20 acre green house in which to grow tomatoes. Their first concern was water availability.

Task Force Member Comment - We should talk with Evan Barrett who heads the Governor's economic development activity about the water needs in the Clark Fork Basin.

Task Force Member Comment - I recommend that we not underestimate the amount of water the basin will need in the discussions with the BOR. We should request at least 500,000 acre feet annually.

Response by Mike McLane - Available information indicates that between the years 1860 to 1985 consumption in the Clark Fork River basin reached 500,000 acre feet annually. It may take another 50 years to consume another 500,000 acre feet annually.

Task Force Member Question - When we talk about 500,000 acre feet annually are we talking about consumption or the amount of water that would be released from Hungry Horse?

Answer by Mike McLane - The 500,000 number is consumption. Additional water may have to be released for carriage purposes. Hopefully, the amount released would be determined by the basin hydrologic model.

Task Force Member Comment - The cost of water in a BOR contract may set the floor price for water transactions in the basin.

Ground Water Conference

Professor Bill Woessner described the University of Montana Center for Riverine Science and Stream Re-naturalization and discussed its interest in participating in the ground water conference. The Center for Riverine Science is an interdisciplinary research center housed within the UM Department of Geology. It falls within the purview of the Vice President for Research and includes core faculty from several UM academic departments. Center research includes all aspects of river science and stream renormalization. The Center holds a two day conference each fall. One day includes presentations by nationally known scientists and the second day includes a field trip related to the conference theme. The Center is interested in participating in the Task Force ground water conference in one of two ways. First, a third day could be added to the Center conference focused on topics of interest to the Task Force. The second option would be for the Center to help fund and participate in a separate Task Force

conference. Professor Woessner stated that if the Task Force opted for the first option, adding an additional day to the Center Conference, that decisions would need to be made by January 2006.

Gerald Mueller passed out the one page summary of the ground water conference idea that he prepared pursuant to direction given at the October Task Force meeting. The Task Force clarified that it is interested in pursuing two events. The first would be a technical conference aimed at addressing first group of three questions from the summary:

- What do we know about the Basin's ground water and its interaction with surface water?
- What do we need to know?
- How do we acquire that information?

The second event which might be styled as a round table would consider the basin's future water needs, planning activities ongoing and needed to meet those needs, and related policy issues.

Mr. Mueller and McLane were directed to organize and convene a steering committee to help design both events. Potential steering committee members to approach include representatives of:

- DNRC and DEQ;
- The Montana Water Center;
- Montana Bureau of Mines and Geology (Professors LaFavre and Patton);
- The Riverine Institute (Professors Moore and Woessner); and
- USGS.

The Task Force may be interested an additional day of a Center for Riverine Science conference if it would be the second rather than a third day.

Task Force Work Plan

The Task Force made no change to its work plan.

Public Comment

There was no public comment.

Next Meeting

The next Task Force meeting is scheduled for Tuesday, December 13 in the meeting room of the Missoula DFWP building at 3201 Spurgin Road. The tentative agenda will include:

- A presentation by the BOR on its hydrologic model of the Clark Fork River; and
- A report on the meeting with the Tribal officials concerning the Hungry Horse negotiations.

Appendix 1

November 8, 2005

Gerald Mueller
Clark Fork River Basin Task Force
440 Evans Avenue
Missoula, MT 59801

Dear Gerald,

Thank you for your October letters. It was a pleasure to attend your meeting of the Task Force. As you pointed out in your letter, DNRC is now the designated agency for coordination of the Task Force. I look forward to working with you and Task Force members on your efforts in the basin.

Regarding the appointments to the Task Force, I will certainly take your recommendations earnestly. You have a broad range of interests represented. My only comment would be that more women be considered for membership and that business be better represented; for example, an area chamber of commerce or junior chamber could have a seat at the table. Getting younger folks involved would also be a plus. I approve the addition of Arvid Hiller and James Steels (sic) your new members. Please let me know what your rotation process is for membership, and perhaps some diversity could be added to the mix in coming years. I'm glad that Joey Jayne will be joining you in an ex officio capacity.

As you know, we have received correspondence from the Confederated Salish Kootenai Tribes regarding the request for Hungry Horse water. We have proposed that such a request be posed jointly by the State and the Tribe. We believe that this could further the strength of the request and also position the Tribe and the State more favorably in on-going efforts to increase flows in the Columbia Basin.

Thank you for your many efforts. We will keep you informed about the potential request for Hungry Horse water.

Sincerely,

Mary Sexton
Director

Appendix 2

Salmon lawsuit could hurt Montana

*By JIM MANN
The Daily Inter Lake*

State officials say Montana stands to lose plenty in terms of water and impacts on fisheries and recreation if a federal judge goes along with the latest requests in a lawsuit over salmon recovery in the Columbia Basin.

If those requests are granted Montana might be compelled to pursue a separate legal action to defend its interests said Bruce Measure, one of Montana's two representatives on the Northwest Power and Conservation Council.

There is not only potential for Montana, but also for Idaho and the Kootenai Tribe of Idaho, Measure said. Their issues are basically Montana's issues. They, too, have suggested that they are so impacted that if they can't get relief they may have to look to a federal court in Idaho to address some of these issues.

For now, Montana is fully engaged as a co-defendant in the so-called salmon lawsuit and will see that process through to the end, Measure said.

Plaintiffs in the lawsuit filed requests last week with U.S. District Judge James A. Redden of Portland that would require Hungry Horse Reservoir and Lake Koocanusa to be held as full as possible in late winter and early spring, followed by greater releases of water in spring and summer to benefit migrating salmon in the lower Columbia River.

With more emphasis on water storage, it's expected that an additional 1.8 million acre feet of water above and beyond what was delivered in 2004 will be tapped from the Montana reservoirs during spring and summer.

The plaintiffs, made up of fishing and conservation groups led by the National Wildlife Federation, contend the extra water would provide considerable benefits to salmon.

But Montana has long argued that the benefits of flow augmentation are barely measurable in the Columbia in terms of flow velocities and temperature, while there are irrefutable impacts on threatened bull trout and other native fish above and below the Montana dams.

They are asking for a great deal with very little expectation or acknowledgment that it's going to have any impacts, Measure said.

The volumes of water and the release schedule the plaintiffs are seeking could easily lower Hungry Horse Reservoir and Lake Koocanusa more than 20 feet below full pool during the summer. Montana has long pressed for drawdowns no greater than 20 feet, and most importantly the state has sought releases that gradually decline through September.

But that didn't happen this year, as a result of the lawsuit and decisions by agencies that govern federal dam operations across the Northwest. Flows were dramatically reduced at the end of August basically shutting down biological productivity in the Kootenai River during the critical month of September, said Brian Marotz, the state's lead biologist on federal hydroelectric matters.

That is something we really want to avoid, he said.

Appendix 3

November 4, 2005

D. Fred Matt
Tribal Chairman
Confederated Salish and Kootenai Tribes
Pablo, MT

Re: Hungry Horse

Dear Chairman Matt,

Thank you for your letter of October 6 regarding HJR 3 and water from Hungry Horse Reservoir. I certainly recognize the complexity of water right matters discussed in your letter, and I also understand the benefits that would come from a successful negotiation of a reserved water rights compact between the State of Montana and your Tribes.

As you know, there are many demands now being made on water in the Columbia River Basin by downstream slates for consumptive uses and for endangered species restoration. NOAA Fisheries was recently given a one-year time frame by a federal judge in Portland within which to come up with a new biological opinion for endangered salmon. Hungry Horse may have to provide additional flow augmentation for the lower Columbia River. Montana has argued consistently for a balance in river operations that provides for the protection of our resident species, including the threatened bull trout and the endangered white sturgeon. I understand that the Tribes and the State years ago cooperated in the development of biological rules (BRCs) for Hungry Horse Reservoir that later became the Integrated Rule Curves (IRCs) that are largely adopted by the federal VARQ rules curves that are used today to operate the reservoir.

Given the demands on the Columbia River system, it may benefit both the Tribes and the State to jointly explore with the Bureau of Reclamation what water may be available out of Hungry Horse Reservoir. The discussions at this point would be exploratory; I recognize that your Tribes have unquantified reserved water rights, and I also recognize that junior state-based water rights are also unquantified. I believe, however, it would be to our mutual benefit to see what water may be available out of Hungry Horse Reservoir, and given how long these matters can take, such discussions could not start too soon.

To that end, I am proposing that the Governor and the Tribes jointly approach the Bureau of Reclamation asking how much water it could make available out of storage at Hungry Horse Reservoir. This joint overture would be made without first estimating a specific amount to be requested. I believe the Tribe and the State could both gain by walking together on this issue involving Hungry Horse Reservoir. Please let me know your thoughts on this joint proposal. I look forward to discussing this and any other proposals further with you. Thank you.

Sincerely,

Mary Sexton
Director